

(2000) 12 AHC CK 0047

Allahabad High Court

Case No: C.M.W.P. No. 52016 of 2000

Rajendra Singh

APPELLANT

Vs

District Inspector of Schools,
Fatehpur and others

RESPONDENT

Date of Decision: Dec. 11, 2000

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Intermediate Education Act, 1921 - Section 16G, 7AA

Citation: (2001) 1 AWC 767 : (2001) 1 UPLBEC 701

Hon'ble Judges: V.M. Sahai, J

Bench: Single Bench

Advocate: S.K. Mishra, for the Appellant; K.K. Chand, SC., for the Respondent

Final Decision: Allowed

Judgement

V. M. Sahai, J.

Adarsh Janta Inter College, Aung, Fatehpur (in brief institution) is an un-aided and recognised institution imparting education upto class-VIII. In 1994, the institution was upgraded to High School and again it was upgraded to Intermediate in 1996. The institution is an un-aided institution and it was never in the grant-in-aid list of the State Government. The petitioner was appointed as Assistant Teacher in the institution on 1.7.1992 and no appointment letter was issued to him. It is alleged that salary of the petitioner is not being paid by the respondents. In the year 1998 in the identity card issued to the petitioner, it is stated that the petitioner was appointed on 1.7.1998 as Hindi Lecturer. It has been stated in paragraph 12 of the writ petition that the petitioner has been disengaged by respondents with effect from March, 2000. This writ petition has been filed for a direction to respondent Nos. 2 and 3 to permit the petitioner to function as lecturer in the institution and pay his salary since March, 2000.

2. Sri S. K. Mishra the learned counsel for the petitioner has vehemently urged that the petitioner was appointed in the institution and even though the institution is unaided, the management could not even disengage the petitioner from service and he is entitled to salary. He has placed reliance on the decisions of this Court in *Dharmendra Pal Dwivedi v. District Inspector of Schools* and another 2000 (2) LBESR 790 and *Smt. Shashi Kala Singh v. District Inspector of Schools, Maharajganj and others* (2000) 1 UPLBEC 2327. He further urged that respondent Nos. 2 and 3 be directed to permit the petitioner to function as Lecturer in the school and pay him salary since March, 2000.

3. On the other hand, Sri K. K. Chand the learned standing counsel has urged that decision of this Court in C.M.W.P. No. 51940 of 2000, *Smt. Suman Lata Sharma v. Regional Joint Director of Education, Meerut and others* decided on 4.12.2000, it has been held that a part time teacher appointed u/s 7AA of the U. P. Intermediate Education Act, 1921 (in brief Act) is not a teacher envisaged u/s 16G of the Act. The service conditions of such teachers are to be governed by the Government order dated 15.10.1986. The Government order dated 15.10.1986 provided that the scheme of engaging part-time teachers is being made on experimental basis for imparting education in the interest of the students and the payment was to be made from the own funds of the management. The Government order further provided that there was no age limit for appointing any person as part-time teacher and even a retired person could be appointed as part time teacher.

4. A teacher working in a recognised unaided institution could not be said to be a regular teacher as envisaged by Section 16G of the Act. He can only be a part-time teacher or an honorary teacher. He could be engaged or disengaged by the management, which pays honorarium from its own resources. The controversy involved in the case is covered by the decision of this Court in *Smt. Suman Lata* (supra).

5. The other argument of the learned counsel for the petitioner is that the management and principal of the institution be directed to continue him as teacher and pay him salary is devoid of any merit. A Full Bench of this Court in [Aley Ahmad Abidi Vs. Dist. Inspector of Schools, Allahabad and Others](#), , has held as below :

"The Committee of Management of an Intermediate College is not a statutory body. Nevertheless, a writ petition filed against it is maintainable if such petition is for enforcement of performance of any legal obligations or duties imposed on such committee by a statute."

A writ of mandamus cannot be issued as a matter of course. It is a discretionary jurisdiction and can only be issued for enforcement or performance of statutory duty by administrative authority, on an application of a person who can show that he himself has a legal right to insist for such performance. A part-time or honorary teacher does not have any statutory right to claim continuance as a teacher in the

institution nor the committee of management is entrusted with performance of statutory duty. Therefore, a writ of mandamus cannot be issued to the management or principal to continue a part-time or honorary teacher nor it can be compelled to pay any honorarium due to such teacher.

6. For the reasons aforesaid, this writ petition falls and is accordingly dismissed.